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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TERRANCE GAFFNEY,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C19-77-MLP

ORDER GRANTING PLAINTIFF'S
MOTION FOR EAJA FEES

13 Terrance Gaffney, the prevailing party in this Social Security disability appeal, moves
14 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), for an award of attorney's
15 fees of \$4,870.30 and expenses of \$6.00. (Dkt. # 18.) The Commissioner argues that no fees
16 should be awarded because her position was substantially justified. (Dkt. # 19.) Plaintiff seeks an
17 additional attorney fee award of \$306.38 for 1.5 hours expended in defending his motion. (Dkt.
18 # 20.) As discussed below, the Court rejects the Commissioner's arguments and GRANTS
19 Plaintiff's requests for fees and expenses.

20 The EAJA authorizes payment of attorney's fees to a prevailing party in an action against
21 the United States, unless the court finds that the government's position on the merits in the
22 litigation was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Substantial justification
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1 requires the government to demonstrate its position had a reasonable basis in both law and fact at
2 each stage of the proceedings, including both the government's litigation position, and the
3 underlying agency action giving rise to the civil action. *Tobeler v. Colvin*, 749 F.3d 830, 832–34
4 (9th Cir. 2014). The “position of the United States” includes *both* the government's litigation
5 position and the underlying agency action giving rise to the civil action. *Meier v. Colvin*, 727
6 F.3d 867, 870 (9th Cir. 2014). Thus, the Court first considers the underlying agency action to
7 determine whether the government's position is substantially justified. *Id.* at 872. A court need
8 not address whether the government's subsequent litigation position is justified when the
9 underlying agency position was not substantially justified. *Id.* at 872–73.

10 Here, the Commissioner simply reargues her position, which the Court already rejected in
11 reversing the ALJ's decision. (Dkt. # 19 at 4-5.) In light of the Court's holding that the ALJ's
12 RFC was inconsistent with the only job the ALJ identified as a job that Plaintiff could perform,
13 taxi starter, the Commissioner's position was not substantially justified. To the extent the
14 Commissioner raises new arguments, they cannot be relied upon to substantially justify a prior
15 position. (*Id.*) The Court is not persuaded that this is the decidedly unusual case in which there is
16 substantial justification under EAJA even though the Commissioner's decision was reversed for
17 harmful legal error. *See Meier*, 727 F.3d at 872; *Thangarajav. Gonzales*, 428 F.3d 870, 874 (9th
18 Cir. 2005).

19 The Commissioner did not object to the amount of fees Plaintiff requested. The Court has
20 reviewed Plaintiff's motion, supporting declarations, and the record, and finds the amount
21 requested is reasonable. The Court therefore GRANTS Plaintiff's motion for attorney's fees and
22 costs (Dkt. # 18), and ORDERS that Plaintiff is awarded attorney's fees of \$5,176.68 under
23 EAJA and costs of \$6.00, for a total award of \$5,182.68. Subject to any offset allowed under the

1 Department of Treasury's Offset Program, the check should be made payable to Plaintiff's
2 attorney, Janet Leanne Martinez, and mailed to Douglas Drachler McKee & Gilbrough, 1904 3rd
3 Ave, Suite 1030, Seattle, Washington 98101.

4 DATED this 27th day of November, 2019.

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6 MICHELLE L. PETERSON
7 United States Magistrate Judge
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